EHQ Project Sdn Bhd & Ors v Equipro Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D8–22–1520 OF 2006
KANG HWEE GEE J
29 AUGUST 2007

Civil Procedure — Injunction — Application for interlocutory injunction — Restraining disposal of assets — Principles of American Cyanamid Co v Ethicon Ltd — Serious question to be tried — Claim of goods sold and delivered — Whether goods had been actually delivered — Whether there was a real risk of dissipation of assets — Rules of the High Court 1980 O 29 r 1(2B)

The plaintiff's applied for an injunction against the first, second and third defendants to restrain the first, second and third defendants from disposing, dealing or diminishing the value of any of the defendants' assets up to the value of RM1.5m pending the trial of this suit. The injunction was granted ex parte on 20 October 2006. The defendants' application to set aside the ex parte order was fixed for hearing on the same day (20 October 2006) and a holding over order was made by the judge pending the completion of this inter partes hearing. The plaintiff's claim arose out of a claim for monies paid for goods, which in this case were light and sound equipments sold and delivered. It is the plaintiffs' case that they had not received the equipments although they had acknowledged the delivery and receipt of all the 12 items and had also authorized MIDF to release the loan to the first defendant company. They had explained the reason in affidavits of the second plaintiff (a director of the first plaintiff).

Delivery of the 12 light and sound equipments was confirmed by affidavits affirmed by Oh Chee Kok, general manager of the first defendant and by the insurers adjuster, Sharuazhan bin Salleh from Allianz General Insurance Malaysia Berhad. Upon release of the sum of RM1.5m, to the first defendant account on 29 August 2006, two cash withdrawals of RM750,000 each were made totaling RM1.5m corresponding with the loan sum taken from the fourth defendant on the same day. The third defendant was a signatory of the first defendant's account.

Held, allowing the application with the usual undertaking for damages and dismissing the first, second and third application to set aside the injunction (encls 18 and 21) with costs):

(1) The court is satisfied that there is a serious question to be tried on the core issue as agreed whether the 12 items of light and sound equipments had been delivered to and received by the first plaintiff. This will in turn determine the right of the plaintiffs to the injunctive relief based on fraud that they are now seeking (see para 19).

(2) The manner by which the sum of RM1.5m was hurriedly withdrawn by the two cash withdrawals from the bank account of the first defendant company by the second and third defendants constitutes in the court's view, a good ground to indicate that the defendants may not have intended to use or did not use the loan obtained by the first plaintiff to purchase the equipments as agreed. The second and third defendants had not deemed it necessary to deny the specific deposition of the plaintiffs that the sum of RM1.5m was taken out in the form of cash and given to the third defendant (see para 21).

(3) It is true that there is an affidavit affirmed by MIDF's insurer's agent Sharuazhan to say that he had inspected the equipments and the premises where they were to be installed for insurance purpose. But he had omitted to state precisely what specific equipment or equipments he had inspected. His affidavit cannot be relied on to arrive at a conclusive and final finding that the equipments were delivered to the first plaintiff by reason that they were physically there (see para 24).

(4) It is also true that the first defendant's general manager Oh Chee Kok had affirmed an affidavit claiming that he had delivered the equipments personally to the first plaintiff company. Given that he was an employee of the first defendant and therefore may be more inclined to favour the employer coupled with the fact that the equipments listed in his delivery order were only described but not identified by any specific identification or serial number, his deposition is to say the least suspect, the truth of which can only be properly assessed at the trial where he can be cross-examined (see para 25).

(5) The purpose of their application at this stage is only to arrest the money which MIDF had released to the first defendant and which the second and third defendants (who were signatories of the first defendant's bank account), had taken out. Given that the RM1.5m were so hurriedly and surreptitiously withdrawn from the bank account of the first defendant by the second and third defendants and given that the search conducted by the plaintiffs at the Registry of Companies had disclosed that the first defendant had not filed any financial nor any profit and loss statements since it was incorporated on 2 September 2005, the risk of dissipation is therefore real and not improbable (see para 28).

[Bahasa Malaysia summary

Plaintif telah memohon satu injunksi terhadap defendan-defendan pertama, kedua dan ketiga untuk menghalang defendan-defendan pertama, kedua dan ketiga daripada menjual, mengurus atau mengurangkan nilai mana-mana aset defendan-defendan sehingga nilai RM1.5 sementara menunggu perbicaraan guaman ini selesai. Injunksi ini telah dibenarkan ex parte pada 20 Oktober 2006. Permohonan defendan-defendan untuk mengenepikan perintah ex parte telah ditetapkan untuk perbicaraan pada hari yang sama (20 Oktober 2006) dan perintah pemegangan lepas masa telah dibuat oleh hakim sementara menunggu selesainya perbicaraan inter partes ini. Tuntutan plaintif timbul daripada satu tuntutan wang yang dibayar untuk barangan, yang mana dalam kes ini merupakan peralatan cahaya dan bunyi yang dijual dan dihantar. Adalah kes plaintif bahawa mereka tidak

menerima peralatan tersebut meskipun mereka telah mengakui sah penghantaran dan penerimaan kesemua 12 item tersebut dan juga memberi kuasa kepada MIDF untuk memberikan pinjaman kepada syarikat defendan pertama. Mereka telah menjelaskan alasan dalam afidavit-afidavit plaintif kedua (pengarah plaintif pertama).

Penghantaran 12 peralatan cahaya dan bunyi telah disahkan dengan afidavit —afidavit yang disahkan oleh Oh Chee Kok, pengurus besar defendan pertama dan oleh pelaras syarikat insurans, Sharuazhan bin Salleh daripada Allianz General Insurance Malaysia Berhad. Selepas pelepasan jumlah RM1.5j, kepada akaun defendan pada 29 Ogos 2006, dua pengeluaran wang tunai berjumlah RM750,000 masing-masingnya dibuat kesemuanya berjumlah RM1.5j yang sama dengan jumlah pinjaman yang diambil daripada defendan keempat pada jari yang sama. Defendan ketiga merupakan penandatangan akaun defendan pertama.

Diputuskan, membenarkan permohonan dengan akujanji biasa untuk ganti rugi dan menolak permohonan pertama, kedua dan ketiga untuk mengenepikan injunksi (lampiran 18 dan 21) dengan kos:

(1) Mahkamah berpuas hati bahawa terdapat persoalan serius untuk dibicarakan berhubung isu utama seperti yang dipersetujui sama ada 12 item peralatan cahaya dan bunyi telahpun dihantar dan diterima oleh plaintif pertama. Ini akan menentukan hak plaintif untuk relif injunktif berdasarkan fraud yang mereka pohon di sini (lihat perenggan 19).

(2) Cara bagaimana sejumlah RM1.5j dikeluarkan secara tergesa-gesa melalui dua pengeluaran tunai daripada akaun bank syarikat defendan pertama oleh defendan-defendan kedua dan ketiga membentuk pada pendapat mahkamah, alasan baik untuk menandakan bahawa defendan-defendan mungkin tidak berhasrat untuk menggunakan atau tidak menggunakan pinjaman yang diperoleh oleh plaintif pertama untuk membeli peralatan tersebut seperti dipersetujui. Defendan-defendan kedua dan ketiga tidak menganggap ia adalah perlu untuk menafikan penyimpanan spesifik plaintif yang jumlah RM1.5j itu telah dikeluarkan dalam bentuk tunai dan diberikan kepada defendan ketiga (lihat perenggan 21).

(3) Adalah benar bahawa terdapat afidavit yang disahkan oleh ejen syarikat insurans MIDF, En Sharuazhan untuk mengatakan bahawa beliau telah memeriksa peralatan dan premis di mana ianya dipasang untuk tujuan insurans. Namun beliau tertinggal untuk mengatakan secara khusus apakah peralatan atau peralatan-peralatan yang spesifik yang beliau perlu periksa. Afidavitnya tidak boleh digunakan untuk tiba kepada kesimpulan dan penemuan muktamad bahawa peralatan-peralatan tersebut telah dihantar kepada plaintif pertama dengan alasan ianya secara fizikal terdapat di sana (lihat perenggan 24).

(4) Adalah juga benar bahawa pengurus besar defendan pertama Oh Chee Kok telah mengesahkan afidavit yang mendakwa beliau telah menghantar peralatan-peralatan tersebut secara peribadi kepada syarikat plaintif pertama. Dengan mengatakan beliau adalah pekerja defendan pertama dan oleh itu mungkin lebih menyebelahi majikan berserta fakta bahawa peralatan-peralatan

yang disenaraikan dalam pesanan penghantarannya hanya dinyatakan tetapi tidak dikenalpasti dengan apa-apa pengenalan spesifik atau nombor bersiri, penyimpanannya adalah untuk menyatakan yang kurang disyaki, kebenaran yang hanya boleh dinilai semasa perbicaraan apabila beliau boleh diperiksa balas (lihat perenggan 25).

(5) Tujuan permohonan mereka pada peringkat ini adalah hanya untuk menahan wang yang MIDF telah keluarkan kepada defendan pertama dan yang mana defendan-defendan kedua dan ketiga (yang merupakan penandatangan akaun bank defendan pertama), telah dikeluarkan. Berdasarkan RM1.5j telah dikeluarkan secara tergesa-gesa dan secara curi-curi dari akaun bank defendan pertama oleh defendan-defendan kedua dan ketiga dan berdasarkan carian yang dilakukan oleh plaintif-plaintif di Pejabat Pendaftaran Syarikat menunjukkan bahawa defendan pertama tidak memfailkan apa-apa penyata kewangan atau keuntungan dan kerugian sejak ia ditubuhkan pada 2 September 2005, risiko pelesapan adalah benar dan tidak mustahil (lihat perenggan 28).]

Notes

For cases on application for interlocutory injunction, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2889–2899.

Cases referred to

American Cyanamid Co v Ethicon Ltd [1975] AC 396 (refd)

Won Walter Pereira (Kamarudin & Partners) for the plaintiffs.
Steven Thiruneelakandan (David Dinesh Mathew with him) (Shook Lin & Bok) for the first, second and third defendants.
Amir Amree (Sidek Teoh Wong & Dennis) for the fourth defendant.

Kang Hwee Gee J:

[1] This is an application by the plaintiffs for an injunction (inter partes) against the first, second and third defendants to restrain the first, second and third defendants from disposing, dealing or diminishing the value of any of the defendants' assets up to the value of RM1.5m pending the trial of this suit.

[2] The facts justifying this application is set up in the supporting affidavit of the second plaintiff (encl 3) as follows:

(1) I am the Second Plaintiff named hereinabove and am duly authorized by the First and Third Plaintiff to affirm the affidavit for and on behalf of the Plaintiffs.

(2) Save and except where otherwise stated, all the facts deposed to therein are within my knowledge and/or derived from documents kept in the possession of the Plaintiffs.

(3) I crave leave of this Honourable Court to refer to the Writ of Summons and Statement of Claim, and the Summons In Chambers filed herein for an injunction order.

(4) I verily aver that the First Plaintiff is an events organizer and has contracts with Sistem Televisyen Malaysia Berhad (TV3), Metropolitan TV Sdn Bhd and Tiga Events Sdn Bhd. Both the Third Plaintiff and I are directors of the First Plaintiff.

(5) In November 2005, the Third Defendant of Victom Sdn Bhd entered into an agreement with the First Plaintiff to purchase a lighting system worth over RM600,000, which system was in turn to be rented out to the Plaintiffs.

(6) In July 2006, the Plaintiffs tried to secure financing to purchase further equipment, that is, Meyer Sound speakers, for the expansion of the First Plaintiff in view of the contracts secured. However, we were unsuccessful.

(7) The Third Defendant, through the First Defendant offered his assistance in securing financing in consideration of which, the First Defendant shall be the supplier of the said equipment.

(8) I verily aver that in a scheme devised by the Third Defendant, a shadow director of the First Defendant, the Plaintiffs were to be the borrowers of the sum of RM1,500,000 from the Malaysian Industrial Development Finance Berhad (MIDF), which loan sum shall be released to the First Defendant, who was to utilize the said moneys to purchase the said equipment. The Third Plaintiff and I agreed to be personal guarantors to the said loan from MIDF.

(9) The Plaintiffs were persuaded to execute all documents by the Third Defendant including a delivery order to ensure release of the loan sum of RM1,500,000 from MIDF to the First Defendant, although no delivery was the made. The Defendants informed the Plaintiffs that that was the procedure or how the transaction was done to enable the Plaintiff to obtain financing. A copy of the Loan Agreement, Debenture and Delivery Order are now produced before me and annexed herewith and marked as Exhibits 'ACW-1', 'ACW-2' and 'ACW-3' respectively.

(10) The loan sum was duly released to the First Defendant, who were obliged to purchase and supply the said equipment to the Plaintiffs. Instead the Defendants absconded with the loan sum.

(11) The Plaintiffs made several attempts to locate the Third Defendant to refund the moneys as the said equipment was not supplied to the Plaintiffs, but all the attempts were futile. The Third Defendant has intercession of this Honourable Court to dispense with personal service by leaving the Order of Court at his last known address at No 13, Jalan Saga SD 8/3, Bandar Sri Damansara, CityplaceKuala Lumpur. A copy of the list of this various addresses is now produced before me and annexed herewith and marked as Exhibit 'ACW-4'.

(12) In view of the breach committed by the First Defendant, the Defendants ought to be compelled to return the full loan sum of RM1,500,000 so that the disbursed loan sum shall be refunded to the financier, MIDF.

(13) I am advised by my solicitors and verily believe that unless an injunction order is granted to freeze the banking accounts and assets of the Defendants upto the sum of RM1,500,000, the said money would be dissipated and made irrecoverable to the Plaintiffs.

(14) I am further advised by my solicitors and verily believe that the balance of convenience lie in favour of the Plaintiffs to grant injunctive relief.

(15) I verily aver that the Plaintiffs through our solicitors undertake to abide by any order this Honourable Court may make as to damages in case this Honourable Court should hereafter be of the opinion that the Defendants shall have sustained any by reason of this Order which the Plaintiffs ought to pay.

COMPLIANCE WITH ORDER 29 RULE 1 (2A) RHC 1980

(1) The facts giving rise to the claim are as set out in this Affidavit and in the Writ of Summons filed herein.

(2) The facts giving rise to the claim for an interlocutory relief are as set out in this Affidavit and the Writ of Summons filed herein.

(3) The facts relied on to justify the application ex parte are as adumbrated hereinabove and no notice of this application is intended to be given to the Defendants as any notice given would result in the delay of the hearing of this urgent ex-parte application. Further, any notice would not only delay the hearing but would cause damage to the status quo as there is a real risk that the Defendants would upon notice expedite my removal.

(4) I respectfully state that I know of no answer, which the Defendants may assert in reply to these proceedings other than what I have disclosed in this Affidavit.

(5) I known of no other facts which might lead this Honourable Court not to grant the ex parte application sought.

(6) I have made no other previous similar ex parte applications to any other Judge of this Honourable Court.

(7) The precise relief sought is as appears in the Summons in Chambers herein and I respectfully repeat and adopt the same.

(23) In the circumstances, I respectfully urge this Honourable Court to grant an order in the terms of my application.

THE PARTIES ARE AGREED THAT THE APPLICATION IS TO BE RESOLVED ON THE FACTUAL ISSUE OF WHETHER THE 12 ITEMS OF LIGHT AND SOUND EQUIPMENTS WERE DELIVERED TO THE PLAINTIFFS

[3] The parties are also agreed that the defendants' applications (encls 18 and 21) to set aside the interim injunction granted ex parte by the late Justice Abdul Wahab Said Ahmad are to be heard together with this application.

SUBMISSION BY COUNSEL FOR THE DEFENDANTS

[4] This is essentially a dispute between the plaintiffs and the first, second and third defendants which arises out of goods sold and delivered. The goods here are light and sound equipments. The first defendant is the seller of the goods and had agreed with the first plaintiff that the goods to be sold at a price of RM2,060,400. The first plaintiff was the purchaser of the goods. The first plaintiff applied for a machinery or equipment loan of RM1.5m from the fourth defendant who was the financier. For the purposes of this loan there were two important documents — (i) a letter of offer from the fourth defendant to the first plaintiff; and (ii) a loan and debenture agreement between the first plaintiff and the fourth defendant which allowed the fourth defendant to repossess the goods in the event of default of repayment. The goods were delivered by the first defendant to the first plaintiff on the 16 August 2006 and there is an expressed acknowledgement of the receipt of the goods on the delivery order by the second plaintiff. The first plaintiff through the second plaintiff then issued the letter of authorisation to the fourth defendant financier to release the loan to the first defendant supplier. The release of the loan by the fourth defendant

was made upon its satisfaction that the goods had been delivered to the first plaintiff. Then the delivery of the goods also confirmed by the employee of the first defendant Oh Chee Kok, general manager of the first defendant. The delivery had been confirmed independently by the insurers appointed by the fourth defendant Allianz General Insurance Malaysia Berhad by the affidavit of its adjuster Sharuazhan bin Salleh who had himself gone to the premises of the first plaintiff and confirmed that the goods had been delivered before issuing the cover note for insurance purpose.

[5] The third defendant is not a shadow director of the first defendant. His role was as an introducer and he introduced the second and third plaintiffs to the second defendant supplier. The third defendant is in fact a director of the company called Victom Sdn Bhd who had previous dealings with the second and third plaintiffs.

[6] It is the plaintiffs' case originally that there was a scheme by the third defendant to defraud the fourth defendant. Subsequently and after obtaining the ex parte order, they amended the claim and the relief and they are now saying that there was a scheme by the first, second and third defendants who have conspired and colluded with the fourth defendant to defraud the plaintiffs. The plaintiffs must stand or fall on the basis of which the ex parte injunction was obtained. They cannot change the case midstream and plead an entirely new cause of action to support their inter parte injunction. I would submit the plaintiffs were unsure of their case as seen from their changed position. I would submit the plaintiffs' entire cause of action is found on illegality which they themselves admit to. The entire transaction is tainted with illegality and therefore they say they are an innocent party. The defendants' case is that there is no illegality here and if there was an illegality as contended by the plaintiffs they were certainly a party to it by the action of the directors. If they were party to the illegality then they are not entitled to the remedy that they seek which is the Mareva injunction when their hands are unclean.

SUBMISSION BY COUNSEL FOR THE PLAINTIFFS

[7] The equipments were listed in the delivery order exh 'SA-1 encl 14. Note that there was no identification or serial number on them. The first, second and third defendants have not given any evidence on the existence of these equipments. The first and second defendants have said in their affidavit that they are in the process of compiling evidence of their own purchase of the said equipments from their own supplier but to date had not supplied any details. Nine months had passed.

[8] Now see exh 'SA-7' first defendant's account (of which the third defendant shadow director is a signatory to this account) shows that on 29 August 2006 RM1.5m was banked into the first defendant's account and the very same day two *cash withdrawals* of RM750,000 each were made totalling RM1.5m corresponding to the loan sum taken from the fourth defendant. Note the third defendant was a signatory of the first defendant's account. We had averred in para 15 of encl 26 affidavit in reply of the second plaintiff which says the *cash was taken by the third defendant in collusion with the second defendant*. No reply was made to this averment.

Further there is a SMS message from the second defendant exhibted as 'SNR-5' encl 23 which says that he had nothing to do and the cheque for RM750,000 was solely signed by the third defendant.

[9] The company was set up in 2 September 2005. It has no track record of ever selling any equipment as the company record on 20 April 2006 from the ROC shows no trading.

[10] We had only changed the statement of claim not this application to now make to include the bank as the fourth defendant with the consequential prayers.

REPLY BY COUNSEL FOR THE DEFENDANTS

[11] The common factual issue is whether the goods were delivered. The delivery order exh 'SA-1' shows an acknowledgement by the second plaintiff the managing director on 16 August 2006 that the goods were received in good order and condition. The same gentleman two days later in exh 'SA-6' authorised the bank to disburse the loan sum to the first defendant. Their own documents show that the goods were delivered. Once the goods had been delivered and the plaintiffs had authorised the bank to release the payment to the first defendant there is no concern on the part of the plaintiffs as to who the first defendant paid the money to. Indeed the letter of authorisation to the bank issued by the first plaintiff was not even disclosed to the court when the ex parte was sought. With regards to the letter of authorisation, it is an afterthought as they had not disclosed it to the court that they had authorised the payment. It was an afterthought and it is a material of non-disclosure.

[12] It is obvious that the plaintiffs themselves take the position by their amendments to their claim that the entire transaction with the fourth defendant is illegal.

FINDINGS AND DECISION

[13] Essentially the plaintiffs' claim is based on the allegation that the third defendant Hishamuddin had conceived of a scheme to defraud the plaintiffs into taking a loan from MIDF to purchase the light and sound equipments for the first plaintiff company's expanding business of events organizing.

[14] The scheme obliged the first plaintiff upon approval to release the approved sum of RM1.5m from MIDF to the first defendant company to enable them to purchase the light and sound equipments with the second and third plaintiffs providing their personal guarantee for the loan that MIDF granted to the first plaintiff.

[15] The second and third defendants were directors of the first defendant company.

[16] The plaintiffs contend that they were deceived into signing all the documents relating to the release of the loan by MIDF including the acknowledgement of delivery of the equipments in order that MIDF will release the loan sum to the first defendant. After the loan was released into the account of the first defendant company the second and third defendants then withdrew it vide two cash withdrawals of RM750,000 each.

[17] The defendants on the other hand denied the alleged fraud and contend that the light and sound equipments had in fact been delivered to the first plaintiff.

[18] It is pertinent to note right from the start that at this stage all that the plaintiffs need to show is that there is a serious question to be tried following which the court has to decide where the balance of justice lies.

As Lord Diplock said in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 at p 407:

> The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.
>
> It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that 'it aided the court in doing that which was its great object, *viz*. abstaining from expressing any opinion upon the merits of the case until the hearing' … So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

[19] Having heard the submissions of the parties I am satisfied that there is a serious question to be tried on the core issue as agreed whether the 12 items of light and sound equipments had been delivered to and received by the first plaintiff. This will in turn determine the right of the plaintiffs to the injunctive relief based on fraud that they are now seeking.

[20] My reasons are as follows:

[21] The manner by which the sum of RM1.5m was hurriedly withdrawn by the two cash withdrawals from the bank account of the first defendant company by the second and third defendants constitutes in my view, a good ground to indicate that the defendants may not have intended to use or did not use the loan obtained by the first plaintiff to purchase the equipments as agreed. The second and third defendants had not deemed it necessary to deny the specific deposition of the plaintiffs that the sum of RM1.5m was taken out in the form of cash and given to the third defendant.

[22] It is the plaintiffs' case that they had not received the equipments although they had acknowledged the delivery and receipt of all the 12 items and had also authorized MIDF to release the loan to the first defendant company. They had explained by the affidavits of the second plaintiff (a director of the first plaintiff) the reasons why the first defendant did so. By para 9 of his affidavit in support he said that the plaintiffs had to sign the delivery order only to ensure that MIDF will release the loan to the first defendant and by para 13 of his subsequent affidavit dated 20 August 2006 he had also explained that he had authorized the bank to release the loan to enable the first defendant to obtain the money to purchase the equipments.

[23] The truth of the plaintiffs' narrative is of course not to be determined at this interlocutory stage but at the trial.

[24] It is true that there is an affidavit affirmed by MIDF's insurer's agent Sharuazhan to say that he had inspected the equipments and the premises where they were to be installed for insurance purpose. But he had omitted to state precisely what specific equipment or equipments he had inspected. His affidavit cannot be relied on to arrive at a conclusive and final finding that the equipments were delivered to the first plaintiff by reason that they were physically there.

[25] It is also true that the first defendant's general manager Oh Chee Kok had affirmed an affidavit claiming that he had delivered the equipments personally to the first plaintiff company. Given that he was an employee of the first defendant and therefore may be more inclined to favour the employer coupled with the fact that the equipments listed in his delivery order were only described but not identified by any specific identification or serial number, his deposition is to say the least suspect, the truth of which can only be properly assessed at the trial where he can be cross-examined.

[26] With respect to the submission of counsel for the defendants that the plaintiffs may have themselves been parties to the fraud which they had now built to justify this application, I must say that I am unable to conclude at this stage that the plaintiffs may have entered into any illegal transaction with the defendants. The submission that they should not be entitled to this injunction by reason of their unclean hands is therefore untenable at this stage. This does not mean that I have accepted their version of the narrative as true and accurate and that they were untainted and had indeed come with clean hands. These are necessarily matters which can only be resolved at the trial.

[27] The balance of justice it is clear to me, lies in favour of the plaintiffs.

[28] The purpose of their application at this stage is only to arrest the money which MIDF had released to the first defendant and which the second and third defendants (who were signatories of the first defendant's bank account), had taken out. Given that the RM1.5m were so hurriedly and surreptitiously withdrawn from the bank account of the first defendant by the second and third defendants and given that the search conducted by the plaintiffs at the Registry of Companies had disclosed

A that the first defendant had not filed any financial nor any profit and loss statements since it was incorporated on 2 September 2005, the risk of dissipation is therefore real and not improbable.

[29] There shall be an order in terms of the application with the usual undertaking to damages.

B

ENCLOSURES 21 AND 18

[30] These are respectively the first and second defendants', and third defendant's applications to set aside the ex-parte interlocutory injunction granted to the plaintiffs.

C

[31] Order 29 r 1(2B) states that:

> Unless sooner revoked or set aside, an interim injunction obtained on an ex parte application shall automatically lapse at the end of 21 days from the date on which it is granted.

D

[32] It is clear that an interlocutory application obtained ex parte expires in 21 days. The onus lies with the plaintiffs to seek an inter partes hearing before the expiry. It is clear therefore that there is no plausible reason why the plaintiffs should take it upon themselves to apply to set aside the ex parte order obtained by the plaintiffs.

E

[33] The record shows that the ex parte injunction was granted on 20 October 2006. The defendants' application to set aside the ex parte order was fixed for hearing on the same day (20 October 2006) by which time the ex parte order had expired and would not have served any purpose. They were superseded by the holding over order that the late Justice Abdul Wahab Said Ahmad made pending the completion of this inter partes hearing. They should have therefore been withdrawn at the earliest opportunity so as not to burden the court with unnecessary applications.

F

G

[34] The applications to set aside were clearly superfluous and must therefore be dismissed with costs.

ENCLOSURES 29 AND 31

H

[35] Defendants' applications to strike out certain paragraphs of the affidavit in reply of the second plaintiff.

Application allowed. First, second and third application to set aside injunction (encls 18 & 21) dismissed with costs.

I

Reported by Navit Kaur Randhawa